

BEHAVIOR ANALYST

*Administrative Rules of the Texas Department of Licensing and Regulation
16 Texas Administrative Code, Chapter 121
(Effective May 1, 2018)*

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121.1. Authority. *(New Section adopted effective May 1, 2018, 43 TexReg 2570)*

This chapter is promulgated under the authority of Texas Occupations Code, Chapters 51 and 506.

121.10. Definitions. *(New Section adopted effective May 1, 2018, 43 TexReg 2570)*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Act--Texas Occupations Code, Chapter 506.
- (2) Advertising--The solicitation for business utilizing the titles "licensed behavior analyst" or "licensed assistant behavior analyst."
- (3) Advisory Board--The Behavior Analyst Advisory Board.
- (4) Applicant--A person who applies for a license to use the title "licensed behavior analyst" or "licensed assistant behavior analyst" or to practice behavior analysis.
- (5) Behavior Analyst Certification Board (BACB) – a certifying entity for persons practicing behavior analysis.
- (6) Client--A person who is receiving behavior analysis services from a license holder.
- (7) Commission--The Texas Commission of Licensing and Regulation.
- (8) Department--The Texas Department of Licensing and Regulation.
- (9) Executive director--The executive director of the department.
- (10) License--A license issued under the Act authorizing a person to use the title "licensed behavior analyst" or "licensed assistant behavior analyst" or to practice behavior analysis.
- (11) License holder--A person who has been issued a license in accordance with the Act to use the title "licensed behavior analyst" or "licensed assistant behavior analyst" or to practice behavior analysis.

121.20. Applications. *(New Section adopted effective May 1, 2018, 43 TexReg 2570)*

- (a) Unless otherwise indicated, applicants for a license must submit all required information on department-approved forms or in a manner specified by the department.
- (b) Applicants must submit the following:
 - (1) a complete application;
 - (2) the applicant's certification number by a behavior analyst certifying entity or other documentation of current certification by a behavior analyst certifying entity, as approved by the department; and
 - (3) the fee required under §121.80.
- (c) The department may require an applicant to submit additional information or documentation of an applicant's qualifications, including the following:
 - (1) official transcripts of all relevant college work or educational programs demonstrating successful completion and degrees earned as applicable to the requirements under the Act and §121.21 and

§121.22;

- (2) experience in behavior analysis;
 - (3) applicable training;
 - (4) qualifications to provide supervision in behavior analysis to unlicensed persons or to behavior analysis license holders;
 - (5) behavior analysis supervision experience provided or received;
 - (6) certifications of individuals providing or receiving supervision;
 - (7) supervision contracts or supervision agreements, or terms of employment;
 - (8) successful completion of applicable examination requirements, including a pass/fail report;
 - (9) information regarding other state licenses, certifications; or registrations that an applicant holds or held in behavior analysis or a related field;
 - (10) information about pending or concluded disciplinary actions against the applicant by the certifying entity; or
 - (11) any other documents or information including documents or information related to the applicant's certification, continuing education, employment, or criminal history.
- (d) The applicant must successfully pass a criminal history background check.
 - (e) An applicant shall not submit to the department any examination-related materials or information, including examination questions, specifications, forms, or scoring sheets, except as provided in subsection (c)(8).
 - (f) Materials submitted in the licensing process become the property of the department and are not returnable.
 - (g) Licenses are valid for two years from the date of issuance.

121.21. Behavior Analyst Licensing Requirements. *(New Section adopted effective May 1, 2018, 43 TexReg 2570)*

- (a) To qualify for licensure as a behavior analyst, a person must:
 - (1) hold current certification as a Board Certified Behavior Analyst or a Board Certified Behavior Analyst-Doctoral or equivalent, issued by the Behavior Analyst Certification Board or its equivalent as approved by the department; and
 - (2) be in compliance with all professional, ethical, and disciplinary standards established by the certifying entity.
- (b) Persons who are subject to or have received a disciplinary action by the certifying entity may be ineligible for a license.
- (c) Persons who hold current certification by the certifying entity but who do not hold a current license may not:
 - (1) practice behavior analysis; or
 - (2) use the title "licensed behavior analyst."

121.22. Assistant Behavior Analyst Licensing Requirements. *(New Section adopted effective May 1, 2018, 43 TexReg 2570)*

- (a) To qualify for licensure as an assistant behavior analyst, a person must:
 - (1) hold current certification as a Board Certified Assistant Behavior Analyst or equivalent, issued by the Behavior Analyst Certification Board or its equivalent as approved by the department;
 - (2) be in compliance with all professional, ethical, and disciplinary standards established by the certifying entity; and
 - (3) be in compliance with the applicable supervision requirements of the certifying entity at all times when practicing behavior analysis.
- (b) Persons who are subject to or have received a disciplinary action by the certifying entity may be ineligible for a license.
- (c) Persons who hold current certification by the certifying entity but who do not hold a current license may not:
 - (1) practice behavior analysis; or
 - (2) use the title “licensed assistant behavior analyst.”

121.23. Examination. *(New Section adopted effective May 1, 2018, 43 TexReg 2570)*

- (a) The examination designated and approved by the department for licensure as a behavior analyst is the Board Certified Behavior Analyst examination in applied behavior analysis, administered by the Behavior Analyst Certification Board.
- (b) The examination designated and approved by the department for licensure as an assistant behavior analyst is the Board Certified Assistant Behavior Analyst examination, administered by the Behavior Analyst Certification Board.
- (c) The department may designate and approve an equivalent examination.
- (d) The department may impose additional examination requirements.

121.24. Educational Requirements. *(New Section adopted effective May 1, 2018, 43 TexReg 2570)*

- (a) An applicant shall meet the educational requirements of the certifying entity for the Board Certified Behavior Analyst or the Board Certified Behavior Analyst-Doctoral or an equivalent standard of the certifying entity to become qualified to apply for the Behavior Analyst license.
- (b) An applicant shall meet the educational requirements of the certifying entity for the Board Certified Assistant Behavior Analyst or an equivalent standard of the certifying entity to become qualified to apply for the Assistant Behavior Analyst license.

121.25. Continuing Education. *(New Section adopted effective May 1, 2018, 43 TexReg 2570)*

- (a) An applicant shall meet the continuing education requirements of the certifying entity, including the continuing education requirements for the Board Certified Behavior Analyst, Board Certified Behavior Analyst-Doctoral, or Board Certified Assistant Behavior Analyst, as applicable, to become qualified to apply for a behavior analysis license.
- (b) License holders shall comply with the continuing education requirements imposed by the certifying entity.

- (c) License holders shall verify completion of continuing education requirements upon request.
- (d) Licenses will be renewed only if continuing education requirements have been met.

121.26. Renewal. *(New Section adopted effective May 1, 2018, 43 TexReg 2570)*

- (a) To renew a license, a license holder must:
 - (1) submit a complete renewal application on a department-approved form;
 - (2) submit the fee required under §121.80; and
 - (3) successfully pass a criminal history background check.
- (b) Applicants for renewal are subject to §121.20(c).
- (c) Each license holder is responsible for renewing the license before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification prior to the expiration date of the license shall not excuse failure to apply for renewal or late renewal.
- (d) A person whose license has expired may late renew the license in accordance with §60.31 (relating to License Renewal Applications) and §60.83 (relating to Late Renewal Fees) of this title.
- (e) A person whose license has expired may not use the title or represent or imply that he or she has the title of 'licensed behavior analyst' or 'licensed assistant behavior analyst' and may not use any facsimile of those titles in any manner.
- (f) A person whose certification by the certifying entity is on inactive status may renew a license that is on inactive status if the person is in compliance with the requirements of the certifying entity for inactive status.
- (g) A person whose certification by the certifying entity is on inactive status may not renew a license that is on active status.
- (h) The department may not renew the license of a license holder who is in violation of the Act or commission rules at the time of application for renewal.

121.27. Inactive Status. *(New Section adopted effective May 1, 2018, 43 TexReg 2570)*

- (a) To change a license to inactive status, an applicant must submit a complete application on a department-approved form.
- (b) A person whose license is on inactive status may not:
 - (1) practice applied behavior analysis;
 - (2) engage in any activity for which a license is required;
 - (3) participate in a supervision relationship with another license holder or unlicensed person unless an active license is not required for the license holder's activity; or
 - (4) engage in any activity for which the person is required to be actively licensed for the interests of another person also engaged in that activity with the license holder.
- (c) A person whose license is on inactive status must comply with the certifying entity's requirements for the

applicable certification during the time the license is on inactive status, or must become recertified before applying to change the license to active status.

- (d) A license on inactive status may be renewed in accordance with §121.26.
- (e) To change from an inactive license status to an active license status, a person must:
 - (1) submit a complete application on a department-approved form;
 - (2) pay the fee required under §121.80(b)(6); and
 - (3) successfully pass a criminal history background check.

121.30. Exemptions. *(New Section adopted effective May 1, 2018, 43 TexReg 2570)*

- (a) A person's certification status by a certifying entity does not affect the applicability of the Act to that person's activities under §§506.051 - 506.059 of the Act.
- (b) Persons who are providing services for which a license is required under the Act or this chapter but who are not certified by a certifying entity may be required to become certified and obtain a license under this chapter in order to continue to provide services.

121.50. Reporting Requirements. *(New Section adopted effective May 1, 2018, 43 TexReg 2570)*

- (a) License holders shall report the following to the department in the manner specified by the department not later than ten days after the action, activity, change, or event occurs; the license holder has been notified; the action becomes final; or a decision, order, or judgment issues:
 - (1) Expiration of the license holder's certification;
 - (2) Surrender or voluntary termination of the license holder's certification;
 - (3) A violation by the license holder of the certifying entity's requirements, the Act, or this chapter;
 - (4) Suspension, probation, reprimand, or any other discipline or revocation of the license holder's certification;
 - (5) The license holder's arrest, deferred adjudication, or criminal conviction, other than a Class C misdemeanor traffic offense;
 - (6) The filing of a criminal case against the license holder;
 - (7) The settlement of or judgment rendered in a civil lawsuit filed against the license holder and relating to the license holder's professional behavior analysis practice;
 - (8) Complaints, investigations, or actions against the license holder by a governmental agency or by a licensing or certification body;
 - (9) Initiation of disciplinary action or other proceedings against the license holder by an employer or other entity that may result in civil liability or criminal charges, or that may result in disqualification for certification by the certifying entity in accordance with the certifying entity's requirements;
 - (10) Commencement of inactive status of the person's certification by the certifying entity; or
 - (11) Any other limitation on, or termination of, the license holder's certification.

- (b) License holders shall report the following to the department in the manner specified by the department not later than thirty days after the action, activity, change, or event occurs; the license holder has been notified; or the action becomes final:
 - (1) Initiation of disciplinary action against the license holder by a behavior analyst certifying entity; or
 - (2) Changes in name, mailing address, phone number, or email contact.

121.65. Behavior Analyst Advisory Board; Membership. *(New Section adopted effective May 1, 2018, 43 TexReg 2570)*

- (a) The Behavior Analyst Advisory Board shall be appointed under and governed by the Act and this section. The advisory board is established under the authority of Occupations Code, §506.101.
- (b) The advisory board is subject to Government Code, Chapter 2110, concerning state agency advisory boards.
- (c) The advisory board shall be composed of nine members appointed by the presiding officer of the commission with the approval of the commission. The composition of the advisory board shall include:
 - (1) four licensed behavior analysts, at least one of whom must be certified as a Board Certified Behavior Analyst--Doctoral or hold an equivalent certification issued by the certifying entity;
 - (2) one licensed assistant behavior analyst;
 - (3) one physician who has experience providing mental health or behavioral health services; and
 - (4) three members who represent the public and who are either former recipients of applied behavior analysis services or the parent or guardian of a current or former recipient of applied behavior analysis services.
- (d) To be qualified for appointment to the advisory board in the position of licensed behavior analyst, a person must have at least five years of experience as a licensed behavior analyst after being certified by the certifying entity.

121.66. Advisory Board: Duties. *(New Section adopted effective May 1, 2018, 43 TexReg 2570)*

The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of the Act and this chapter.

121.67. Advisory Board: Terms; Vacancies. *(New Section adopted effective May 1, 2018, 43 TexReg 2570)*

- (a) The term of office of each member of the advisory board shall be six years. Members shall serve after expiration of their term until a replacement is appointed.
- (b) A member of the advisory board may be removed from the advisory board pursuant to Texas Occupations Code §51.209, Advisory Boards; Removal of Advisory Board Member.
- (c) Grounds for removal include any action by the certifying entity that suspends or terminates the certification of the member; the expiration of the member's certification; the change of the certification from active to inactive status; or the voluntary surrender of certification by the member.

121.68. Advisory Board: Officers. *(New Section adopted effective May 1, 2018, 43 TexReg 2570)*

- (a) The presiding officer of the commission shall designate a member of the advisory board as the presiding officer of the advisory board to serve for a term of one year.

- (b) The presiding officer of the advisory board shall preside at all advisory board meetings at which he or she is in attendance. The presiding officer of the advisory board may vote on any matter before the advisory board.

121.69. Advisory Board: Meetings. *(New Section adopted effective May 1, 2018, 43 TexReg 2570)*

- (a) The advisory board shall meet at least twice each year and at the call of the presiding officer of the commission or the executive director.
- (b) Meetings shall be announced and conducted under the provisions of the Open Meetings Act, Texas Government Code, Chapter 551.
- (c) A quorum of the advisory board is necessary to conduct official business. A quorum is five members.
- (d) Advisory board action shall require a majority vote of those members present and voting.

121.70. Responsibilities of License Holders. *(New Section adopted effective May 1, 2018, 43 TexReg 2570)*

- (a) Licenses issued by the department remain the property of the department and shall be surrendered to the department on demand.
- (b) A license holder shall:
 - (1) inform the department of any violations of this chapter or the Act.
 - (2) promptly provide upon request any documents or information satisfactory to the department to demonstrate the license holder's qualifications for certification by the certifying entity or for licensure by the department.
 - (3) report to the department any fact that may affect the license holder's qualifications to hold a certification or license in accordance with §121.50.
 - (4) notify each client or the minor client's parent or authorized representative of the department's name, website, email address, mailing address, and telephone number for the purpose of directing complaints to the department.
 - (5) truthfully respond in a manner that fully discloses all information in an honest, materially responsive and timely manner to a complaint filed with or by the department.
 - (6) not interfere with a department investigation or disciplinary proceeding in any way, including by misrepresentation or omission of facts to the department or using threats or harassment against any person.
 - (7) comply with any order issued by the commission or the executive director that relates to the license holder.
 - (8) provide a client or a minor client's parent or authorized representative with a written agreement for services prior to the commencement of behavior analysis services.
 - (A) The agreement shall contain, at a minimum, a description of the services to be provided, goals, techniques, materials, the cost for services, payment arrangements and policies, hours, cancellation and refund policies, contact information for both parties, and the dated signatures of both parties.
 - (B) Any subsequent modifications to the agreement shall be signed and dated by both parties.

- (9) maintain legible and accurate records of behavior analysis services rendered. A license holder practicing in an educational setting, school, learning center, or clinic [7] shall comply with the recordkeeping requirements of the service setting or with the retention requirements of the certifying entity, if the latter are more stringent.
- (10) maintain records for a minimum of the longer of:
 - (A) seven years following the termination of behavior analysis services;
 - (B) seven years following the date on which a minor client reaches the age of 22; or
 - (C) the retention period required by the certifying entity.
- (11) not delegate any services, functions, or responsibilities requiring professional competence to a person not competent or not properly credentialed. A license holder in private practice is responsible for the services provided by unlicensed persons employed or contracted by the license holder.
- (12) display the license in the primary location of practice, if any, but shall not display a license that has been photographically or otherwise reproduced.
- (c) If any requirement of a license holder's certifying entity differs in stringency from a requirement of the Act or the commission rules, the more stringent provision shall apply.
- (d) If any requirement of a license holder's certifying entity conflicts with a requirement of the commission rules such that the license holder cannot reasonably comply with both requirements, the license holder shall comply with the requirement of the certifying entity.

121.75. Code of Ethics. *(New Section adopted effective May 1, 2018, 43 TexReg 2570)*

- (a) Individuals certified by the BACB are required to comply with the *BACB Professional and Ethical Compliance Code for Behavior Analysts*.
 - (1) The department may consult the requirements of the certifying entity or the *BACB Professional and Ethical Compliance Code for Behavior Analysts* in the application and enforcement of the ethical standards included in this section.
 - (2) The department will apply the requirements of this section consistent with the requirements, guidance, and interpretations of the certifying entity unless an alternate interpretation is reasonably necessary or required.
- (b) License holders shall comply with the following ethical standards when providing behavior analysis services. All license holders shall:
 - (1) comply with all provisions of the Act and this chapter, as well as any other state or federal law or rule that applies to the provision of behavior analysis services by, or the regulation of the license holder.
 - (2) provide behavior analysis services without discrimination based on race, color, national origin, religion, gender, age, or disability.
 - (3) offer to perform or perform only behavior analysis services for which the license holder is qualified and that are within the scope of the license holder's certification, license, or competence, considering level of education, training, and experience.

- (4) accurately and truthfully represent his or her education, training, credentials, and competence.
- (5) fully and accurately inform clients of the nature and possible outcomes of services rendered.
- (6) be knowledgeable of all available information relevant to the behavior analysis services being provided to the client.
- (7) take reasonable measures to ensure a safe environment for clients.
- (8) maintain objectivity in all matters concerning the welfare of the client.
- (9) refrain from participating in inappropriate or exploitative multiple relationships.
- (10) not guarantee, directly or by implication, the results of any behavior analysis services, except that a reasonable statement of prognosis may be made. A license holder shall not mislead clients to expect results that cannot be predicted from reliable evidence.
- (11) obtain written consent from a client or a minor client's parent or authorized representative in order to use the client's data or information for research or teaching activities.
- (12) reveal confidential or personal information about a client only with authorization unless:
 - (A) required by law or compelled by a court to reveal the information;
 - (B) required by the certifying entity to reveal the information; or
 - (C) revealing the information is necessary to protect the welfare of the client or of the community.
- (13) document any confidential or personal information disclosed, the person or entity to whom it was disclosed, and the justification for disclosure in the client's record if a license holder reveals such information about a client without authorization.
- (14) provide, in plain language, a written explanation of the charges for behavior analysis services previously made on a bill or statement, upon the written request of a client or the minor client's parent or authorized representative.
- (15) accurately represent and describe any product created or recommended by the license holder.
- (16) not require the purchase by a client of any product created or produced by the license holder.
- (17) not use his or her professional relationship with a client to promote any product for personal gain or profit, unless the license holder has disclosed to the client the nature of the license holder's personal gain or profit.
- (18) not offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for securing or soliciting clients or patronage.
- (19) not persistently or flagrantly overcharge a client or third party.
- (20) not persistently or flagrantly over treat a client.
- (21) terminate a professional relationship when it is reasonably clear that the client is not benefitting from the services being provided or when it is reasonably clear that the client no longer needs the services.

- (22) seek to identify competent, dependable referral sources for clients and shall refer when requested or appropriate.
 - (23) not sell, barter, or offer to sell or barter a license.
 - (24) refrain from engaging in sexual contact, including intercourse or kissing, sexual exploitation, or therapeutic deception, with a client. Sexual contact and sexual intercourse mean the activities and behaviors described in Penal Code, §21.01. Sexual exploitation means a pattern, practice, or scheme of conduct, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. Therapeutic deception means a representation by a license holder that sexual contact with, or sexual exploitation by, the license holder is consistent with, or part of, the behavior analysis services being provided to the client.
 - (25) refrain from practicing behavior analysis if, due to illness or use of alcohol, drugs or medications, narcotics, chemicals or other substances, or from mental or physical conditions, the person is incapable of practicing with reasonable skill and safety to clients in the provision of behavior analysis services.
- (c) Information used by a license holder in any advertisement or announcement shall not contain information that is false, inaccurate, misleading, incomplete, out of context, deceptive or not readily verifiable. Advertising includes, but is not limited to, any announcement of services, letterhead, business cards, commercial products, and billing statements. False, misleading, or deceptive advertising or advertising not readily subject to verification includes advertising that:
- (1) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;
 - (2) makes a representation likely to create an unjustified expectation about the results of a professional service;
 - (3) compares a professional's services with another professional's services unless the comparison can be factually substantiated;
 - (4) causes confusion or misunderstanding as to the credentials, education, or licensing of a professional;
 - (5) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of client; or
 - (6) represents in the use of a professional name, a title or professional identification that is expressly or commonly reserved to or used by another profession or professional, unless the license holder is licensed or otherwise authorized to use the title or professional identification.

121.80. Fees. *(New Section adopted effective May 1, 2018, 43 TexReg 2570)*

- (a) All fees paid to the department are nonrefundable.
- (b) Licensing fees are as follows:
 - (1) application and initial license, behavior analyst--\$165
 - (2) application and initial license, assistant behavior analyst--\$110
 - (3) renewal, behavior analyst--\$165

- (4) renewal, assistant behavior analyst--\$110
- (5) change, active status to inactive status--\$0
- (6) change, inactive status to active status--\$25
- (7) renewal of license on inactive status--renewal fees as stated in paragraphs (3) and (4)
- (8) license duplicate or replacement--\$25
- (c) Late renewal fees for licenses issued under this chapter are prescribed under §60.83 of this title (relating to Late Renewal Fees).
- (d) The fee for a dishonored/returned check or payment is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).
- (e) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

121.90. Basis for Disciplinary Action. *(New Section adopted effective May 1, 2018, 43 TexReg 2570)*

- (a) This section is authorized under Texas Occupations Code, Chapters 51 and 506.
 - (1) If a person violates any provision of Texas Occupations Code, Chapters 51, 506, or any other applicable provision, this chapter, or a rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of the Texas Occupations Code and the associated rules.
 - (2) The enforcement authority granted under Texas Occupations Code, Chapters 51 and 506, and any associated rules may be used to enforce the Texas Occupations Code and this chapter.
- (b) The department may consult the requirements of the certifying entity, and the *BACB Professional and Ethical Compliance Code for Behavior Analysts*, in the application and enforcement of this chapter.
- (c) The department will apply the requirements of this section consistent with the requirements, guidance, and interpretations of the certifying entity unless an alternate interpretation is reasonably necessary.
- (d) The department may refer or report to a certifying entity information, including complaints, investigations, and violations of Texas law, rules, or orders that are or may be relevant to the qualifications of any person to obtain or maintain a certification.
- (e) The commission or the executive director may deny, revoke, suspend, probate, reprimand, or otherwise discipline a license, or impose an administrative penalty, when a person through fraud, misrepresentation, concealment of a material fact, or in violation of the certifying entity's requirements, the Act, or this chapter:
 - (1) obtains, renews, or maintains a license; or
 - (2) practices or offers to practice behavior analysis services.

121.95. Complaints. *(New Section adopted effective May 1, 2018, 43 TexReg 2570)*

- (a) The department shall list, with its business telephone number, a toll-free telephone number established to accept complaints relating to a health profession regulated by the department.

- (b) A license holder shall notify each client of the name, mailing address, email address, telephone number, and website of the department for the purpose of directing complaints to the department. A license holder shall display this notification:
 - (1) on a sign prominently displayed in the primary location of practice of each license holder, if any; and
 - (2) on written documents including a written contract, a bill for service, or information brochure provided by the license holder to a client or third party.
- (c) A license holder shall display the license certificate as issued by the department in the primary location of practice, if any.
- (d) A license holder shall not make any alteration on official documents issued by the department.
- (e) All information and materials subpoenaed or compiled by the department in connection with a complaint and investigation under this chapter are confidential in accordance with §506.202 of the Act.
- (f) The department may disclose a complaint or investigation and all information and materials compiled by the department in connection with the complaint or investigation to a person's certifying entity in accordance with §506.202 of the Act.
- (g) For purposes of this chapter, a health profession is a profession for which the enabling statute is located in Title 3, Occupations Code, or that is determined to be a health profession under other law.